

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3308 of 1983

Date of decision: 10-1-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SPORTS CLUB OF GUJARAT LTD.

Versus

STATE OF GUJARAT

Appearance:

Mr. D.G.Shukla for MR SI NANAVATI for Petitioner
MR. Samir Dave for Respondents No. 1 & 2
MR BP TANNA for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/01/97

ORAL JUDGEMENT

The petitioner - Sports Club of Gujarat Ltd. has

challenged the letter of the Assistant Labour Commissioner, Ahmedabad, dated 20th June, 1983 calling upon the petitioner to comply with the provisions of the Minimum Wages Act forthwith, failing which further actions were threatened to be taken against the petitioner Club. The State of Gujarat, under letter dated 6-1-1983, wrote to the Labour Commissioner that the provisions of the Minimum Wages Act, 1948 are applicable to the petitioner -Club, and compliance thereof was directed to be made. The petitioner submitted representation to the Assistant Labour Commissioner on 24th June, 1983 (annexure-G to the petition) by which request was made for postponement of the matter for ten days for making effective representation. Further statement has been made that recovery applications have already been filed in the Labour Court for recovery of the minimum wages, as per the Minimum Wages Act, 1948 from the employer and the said matter is pending. In the said matter the petitioner has taken the stand that the provisions of the Minimum Wages Act are not applicable to the Club. During the course of argument the learned counsel for the petitioner admitted that the recovery application has been disposed of as the matter has been compromised.

2. The petitioner, instead of filing detailed reply to the letter of the Assistant Labour Commissioner dated 20th June, 1983, has come up before this Court by filing this special civil application and prayer has been made not only for quashing the said letter but also for declaration that the provisions of the Minimum Wages Act, 1948 are not applicable to the petitioner Club. The validity of the provisions of the aforesaid Act has not been challenged. The question is only of applicability of the provisions of the said Act to the petitioner Club. For this declaration the petitioner should have first approached the authority concerned, i.e. the Assistant Labour Commissioner, Ahmedabad, and if the matter is decided against the Club, it could approach the State Government and then only could have approached the appropriate legal forum available to it. That has precisely not been done in the present case. The petitioner was only called upon to comply with the provisions of the Minimum Wages Act, 1948. So, it was only a show cause notice given to the petitioner and the petitioner had opportunity to show cause that the provisions of the Minimum Wages Act, 1948 cannot be made applicable to the petitioner Club. It is not the case of the petitioner that the Assistant Labour Commissioner, Ahmedabad, has altogether lacked jurisdiction to give such notice.

3. Learned counsel for the petitioner submitted that the petitioner has no objection to go before the Assistant Labour Commissioner, Ahmedabad, but that officer will not be in a position to decide this matter as the impugned letter has been issued by him in pursuance of the Government's letter dated 6-1-1983. I find sufficient merit in this contention of the learned counsel for the petitioner. It is a case where the Government has written letter to the Labour Commissioner stating that the provisions of the Minimum Wages Act are applicable to the case of the petitioner-Club and as such necessary action is to be taken for compliance thereof. In such a case it is not proper and advisable to send the petitioner before the Assistant Labour Commissioner, Ahmedabad. But the petitioner can approach the State Government to satisfy it that the provisions of the Minimum Wages Act, 1948 are not applicable to the Club. As stated earlier it is a simple matter. The petitioner should first approach the State Government for determining the question whether the provisions of Minimum Wages Act, 1948 are applicable to the petitioner Club or not. The Hon'ble Supreme Court in the case of Executive Engineer, B.S.H.B. vs. Ramesh Kumar Singh , reported in 1996(1) SCC 327 held that writ petition against show cause notice is not maintainable.

4. In the result this special civil application fails and the same is dismissed on the ground that the petitioner has to first approach the State Government with all its grievances and defence against the proposed action of the Assistant Labour Commissioner, calling upon it to comply with the provisions of the Minimum Wages Act, 1948. The petitioner, if it so desires, may make representation to the State Government within a period of one month from the date of receipt of certified copy of this order. The State Government shall decide the representation of the petitioner within a period of three months thereafter, after hearing the petitioner's representative. While admitting this petition this court protected the petitioner by granting ad interim relief in terms of para 11(d) of the petition on the statement of Mr. J.C. Bhatt for Mr. S.I.Nanavati that as a matter of fact presently they are not paying its employees less than what is prescribed under the provisions of the Minimum Wages Act, 1948 and are going to pay the same in future. The interim relief which was granted by this court earlier shall continue till the matter is decided by the State Government on the same terms and conditions on which it was granted by this Court. Rule discharged.

No order as to costs.

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